REMARKS

A.   Overview

Claims 3-11 were pending when the Office Action was mailed. Applicant herein amends claims 5 and 8 and does not cancel any claims or present any new claims. Accordingly, claims 3-11 remain pending.

The Office Action rejects claims 8-11 under 35 U.S.C. § 112, second paragraph; rejects claims 8-11 under 35 U.S.C. § 101; and rejects claims 3-11 under 35 U.S.C. § 103(a) over a combination of U.S. Patent Publication No. 2001/0054008 to Miller et al. ("Miller") and U.S. Patent Publication No. 2003/0055723 to English ("English"). Applicant herein amends the claims to clarify the subject matter for which protection is sought. For the reasons discussed in detail below, applicant submits that the pending application is in condition for allowance.

B.   Rejection under 35 U.S.C. § 112, second paragraph

The Office Action rejects claims 8-11 under 35 U.S.C. § 112, second paragraph, asserting that the claims fail to point out and distinctly claim the subject matter which applicant regards as the invention. Although applicant does not concur in the propriety of this rejection, to advance examination applicant herein amends claim 8 to recite "[a] data transmission network conveying a page definition data structure, the page definition data structure comprising." Applicant respectfully requests that the Examiner reconsider and withdraw this rejection.

C.   Rejection under 35 U.S.C. § 101

The Office Action rejects claims 8-11 under 35 U.S.C. § 101, asserting that claim 8 is directed to a disembodied data structure "resembling a data file without reciting any functional changes due to an application program and resulting in an useful, concrete, and

tangible result." Applicant respectfully disagrees. Claim 8 recites "[a] data transmission network conveying a page definition data structure, the page definition data structure comprising: content specifying the display of information describing a selected item; and content specifying the display of a single control that may be activated to order the selected item." The features recited by claim 8 provide a useful, concrete, and tangible result, namely, the ability for a computer to display information describing an item and to display a control for ordering the item. The features recited by claim 8 are no less capable of functioning with a computer to effect a practical application that results in a useful, concrete, and tangible result than if the they were recited as being stored in a computer-readable medium, which the Examiner concedes would satisfy 35 U.S.C. § 101. Furthermore, the recited data structure is conveyed by a data transmission network and, therefore, is not disembodied. Accordingly, applicant respectfully requests that the Examiner reconsider and withdraw this rejection.

D.   Rejections under 35 U.S.C. § 103(a)

Applicant's claimed technology provides a user who is requesting information about an item with information about the item and a control for ordering the item from a featured seller. (Specification, Abstract). When a user submits a request for information about an item, applicant's claimed technology identifies a plurality of sellers based on three exclusive criteria: (1) offering an item for sale; (2) having an availability level for the item that exceeds a predetermined threshold; and (3) having a seller score that exceeds a predetermined threshold. (Specification, Abstract). Once this group is identified, applicant's claimed technology selects from the group the seller offering the item for sale at the lowest price. (Specification, Abstract). Applicant's technology transmits to the user information about the item and a control for ordering the item from the selected seller. (Specification, Abstract).

Miller is directed to a technique for selecting a vendor based on a list of user-selected products. (Miller, Abstract). In response to receiving a list of products from a

user, Miller first identifies a group of vendors that sell the products and from the identified group of vendors, Miller identifies a vendor, or a group of vendors, based on various predetermined criteria established by the user, such as price, proximity, availability of delivery, stock, and shipping availability. (Miller, ¶¶ [0176], [0178]). Information about the selected vendor(s) is then transmitted to the user, such as store name and location, web address, vendor's price for the item, and availability. (Miller, ¶ [0171]).

English is directed to techniques for recommending alternative vendors for goods or services based on a user satisfaction rating provided at the time of payment. (English, Abstract). For example, a user who is paying a service bill online may also provide a satisfaction rating for the service vendor. If the provided rating is below a certain threshold or the aggregate rating (based on ratings from other users) of other vendors of the same or similar service, English provides the user with information about vendors having an aggregate rating higher than the provided rating. (English, ¶ [0062]). Furthermore, if the user chooses to switch to an alternative vendor, English facilitates the transfer of the user's account information to the alternative vendor. (English, Abstract).

Claim 3 recites "among a plurality of sellers, identifying those (1) that are offering the item for sale, (2) whose availability level for the selected item exceeds a predetermined availability threshold, and (3) having a seller score relating to a plurality of different items offered for sale by the seller that exceeds a predetermined score threshold" and "selecting as the featured seller of the item the identified seller that is offering the selected item at the lowest price." Similarly, claim 7 recites "an identification subsystem that identifies, among a plurality of sellers, those (1) that are offering the item for sale, (2) whose availability level for the selected item exceeds a predetermined availability threshold, and (3) having a seller score relating to a plurality of different items offered for sale by the seller that exceeds a predetermined score threshold" and "a selection subsystem that selects as the featured seller of the item the identified seller that is offering the selected item at the lowest price." Similarly, claim 8 recites "the distinguished seller being selected by offering the selected item for sale at the lowest price among those sellers of the plurality (1) that are

offering the item for sale, (2) whose availability level for the selected item exceeds a predetermined availability threshold, and (3) having a seller score that exceeds a predetermined score threshold." The Office Action relies on Miller at ¶¶ [0171], [0172], [0174], [0176], [0178] and English at ¶ [0062] as disclosing these features. Applicant respectfully disagrees that the combination of Miller and English discloses these features. The relied-upon portions of Miller describe identifying a group of vendors selling a product or products and selecting from the group of identified vendors a vendor based on predetermined criteria, such as "price, proximity to the vendor, availability of delivery, [and] whether the products are in stock." (Miller, ¶ [0178]). The group of vendors that Miller identifies is generated on the basis of a single characteristic, namely offering a particular product or products for sale. Miller uses a user's predetermined criteria to decide which vendor or vendors from this group should be presented to the user. Even in the case where a user's only predetermined criterion is price, the group of vendors to which this predetermined criterion is compared consists of a group of vendors having in common only the fact that they are offering a product or products for sale. Miller does not identify a group of vendors that (1) are offering a product for sale; (2) have an availability level for the product that exceeds an availability threshold; and (3) have a seller score that exceeds a score threshold and then select from this group of vendors the vendor selling the product at the lowest price as recited. The relied-upon portion of English, which describes attributing a seller score to each vendor and selecting vendors based on this seller score, does not cure this deficiency. The Office Action suggests that it would have been obvious "to apply the criteria including a seller score relating to a plurality of different items offered for sale by the seller that exceeds a predetermined score threshold as taught by English to improve the step of identifying sellers in the commerce method of Miller." However, because Miller, as discussed above, uses "predetermined criteria" to select a vendor or vendors from a group of vendors generated on the basis of a single characteristic, adding a criterion to the criteria fails to teach selecting a vendor from a group of vendors generated on the basis of three characteristics. The combination of Miller and English fails to teach the two-stage process of first identifying a group of sellers on the basis of three

criteria and second, selecting from the group of identified sellers a seller on the basis of price as recited. Accordingly, claims 3, 7, and 8 patentable over the combination of Miller and English, as are their dependent claims 4-6 and 9-11. Applicant respectfully requests that the Examiner reconsider and withdraw these rejections.

Furthermore, claim 5 now recites "wherein the identifying and selecting is performed at a uniform interval." The Office Action relies on ¶ [0182] of Miller as disclosing "wherein the identifying and selecting is performed periodically," identifying each time a request is received as the period. (Office Action, Page 6). Applicant herein amends claim 5 for clarity. As amended, claim 5 is directed to identifying and selecting a vendor at a uniform interval (i.e., every hour, day, week, etc.) so that this process does not have to be repeated unnecessarily. The period identified by the Examiner (i.e., each time a request is received) does not constitute a uniform interval because users may request information at any time. Accordingly, claim 5 is patentable over Miller and English. Applicant respectfully requests that the Examiner reconsider and withdraw this rejection.

In rejecting claim 9, the Office Action relies on the analysis provided in rejecting claims 3-6, stating that "claims 8-11 are closely parallel to the limitations of method claims 3-6." Claim 9 recites "wherein the data structure further comprises contents specifying the display of the control that may be activated to display ordering controls that may be activated to order the selected item from a different one of the plurality of sellers other than the distinguished seller." Applicant respectfully submits that this feature is not recited in claims 3-6. Accordingly, applicant respectfully submits that the bases for rejecting claims 3-6 are insufficient to reject claim 9 and request that the Examiner withdraw this rejection.

In view of the above amendments and remarks, applicant believes the pending application is in condition for allowance. Accordingly, applicant respectfully requests that the Examiner reconsider and withdraw these rejections.

Please charge any deficiencies, or credit any overpayment, to our Deposit Account No. 50-0665, under Order No. 249768068US from which the undersigned is authorized to draw.

Dated: April 24, 2008   Respectfully submitted,

By_____
Steven D. Lawrenz
   Registration No.: 37,376
PERKINS COIE LLP
P.O. Box 1247
Seattle, Washington 98111-1247
(206) 359-8000
(206) 359-7198 (Fax)
Attorney for Applicant